

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**CYRIL B. KORTE, JANE E. KORTE,
and KORTE & LUITJOHAN
CONTRACTORS, INC.,**
Plaintiffs,

v.

CASE NO. 3:12-CV-01072-MJR-PMF

**UNITED STATES DEPARTMENT
OF HEALTH AND HUMAN
SERVICES; KATHLEEN SEBELIUS,**
in her official capacity as the Secretary of
the United States Department of Health and
Human Services; **UNITED STATES
DEPARTMENT OF THE TREASURY;**
TIMOTHY F. GEITHNER, in his official
capacity as the Secretary of the United States
Department of the Treasury; **UNITED
STATES DEPARTMENT OF LABOR;**
and **HILDA L. SOLIS**, in her official
capacity as Secretary of the United States
Department of Labor,

Defendants.

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PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs move this court, pursuant to Fed. R. Civ. P. 56 and SDIL-LR 7.1, for the entry
of an order granting them partial summary judgment, and they state as follows:

1. Plaintiffs have raised five counts in their complaint. This motion is directed only
to Count I (Religious Freedom Restoration Act) and Count II (Free Exercise Clause). Plaintiffs
preserve for further proceedings all other issues and claims raised in their complaint including
those that comprise Counts III, IV, and V and a determination of attorneys' fees and costs.

2. Plaintiffs rely on the more detailed reasons for granting this motion set forth in the
supporting memorandum of law and accompanying declarations, which show that there are no

genuine issues of material fact in dispute and that as a matter of law Plaintiffs should be awarded summary judgment on Count I (Religious Freedom Restoration Act) and Count II (Free Exercise Clause) of their complaint.

3. Plaintiffs request that this court

- a. enter summary judgment declaring that Defendants' regulations, requiring Plaintiffs to include in their employee health benefit plan coverage for all FDA-approved contraceptives methods, sterilization procedures, and related patient education and counseling for women with reproductive capacity, including the substantive requirement imposed in 42 U.S.C. § 300gg-13(a)(4) ("the Mandate"), violate Plaintiffs' rights as protected by the Religious Freedom Restoration Act (Count I) and by the Free Exercise Clause of the First Amendment to the United States Constitution (Count II) and
- b. enter a permanent injunction prohibiting Defendants, their officers, agents, servants, successors in office, employees, attorneys, and those acting in concert or participation with them from applying and enforcing against Plaintiffs any regulations that require Plaintiffs to include in their employee health benefit plan coverage for all FDA-approved contraceptives methods, sterilization procedures, and related patient education and counseling for women with reproductive capacity, including the substantive requirement imposed in 42 U.S.C. § 300gg-13(a)(4) ("the Mandate"), any penalties and fines, including those found in 26 U.S.C. §§ 4980D, 4980H, and 29 U.S.C. § 1132, and any determination that the requirements are applicable to Plaintiffs.

4. A proposed order accompanies this motion.

Accordingly, for the above-stated reasons and those set forth in the supporting memorandum of law and declarations, Plaintiffs request that this court grant this motion and enter summary judgment in Plaintiffs' favor on Count I and Count II of their complaint and preserve the remaining issues and claims in their complaint for further proceedings.

Respectfully submitted on this 10th day of October, 2012.

/s/ Edward L. White III

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*Applications for admission forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2012, true and correct copies of the foregoing and proposed order were caused to be sent by certified United States Mail, return receipt requested, to the following:

U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201
Defendant
Tracking No.: 7011-3500-0003-0896-2452

Kathleen Sebelius, Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201
Defendant
Tracking No.: 7011-3500-0003-0896-2407

U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220
Defendant
Tracking No.: 7011-3500-0003-0896-2414

Timothy Geithner, Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220
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Tracking No.: 7011-3500-0003-0896-2391

U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210
Defendant
Tracking No.: 7011-3500-0003-0896-2438

Hilda Solis, Secretary
U.S. Department of Labor
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Civil-process clerk
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Eric Holder, Attorney General
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